

# Special Alert: CFPB releases Supplemental Notice of Proposed Rulemaking on Time-Barred Debt Disclosures

**February 26, 2020**

On February 21, the CFPB [issued](#) a Supplemental Notice of Proposed Rulemaking (NPRM) to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA), to require debt collectors to make certain disclosures when collecting time-barred debts (the “Supplemental Proposed Rule”).

The Supplemental Proposed Rule adds to the CFPB’s [proposed rule](#), issued May 7, 2019, (InfoBytes coverage [here](#)), to amend Regulation F to broadly implement the FDCPA, with respect to third-party debt collectors (the “Proposed Rule”). The Bureau noted when releasing the earlier Proposed Rule that it was contemplating additional disclosure requirements for time-barred debt, and reserved space for such disclosures within Regulation F, as then proposed. The CFPB released several documents related to the Supplemental Proposed Rule, including a [fact sheet](#) discussing the Supplemental Proposed Rule and a [report](#) on the disclosure of time-barred debt and the right of revival, providing findings from quantitative disclosure testing that the CFPB conducted.

The Bureau stated in a [press release](#) that the purpose of the Supplemental Proposed Rule is to address the CFPB’s consumer research that found that “a time-barred debt disclosure helps consumers understand that they cannot be sued if they do not pay,” which facilitates “better informed decisions” as to whether to pay a debt. In particular, the CFPB noted in the Supplemental Proposed Rule that “[c]onsumers unfamiliar with statutes of limitations may take away from a debt collector’s attempt to collect a time-barred debt the misleading impression that the debt is legally enforceable—even if the debt collector does not explicitly threaten litigation.”

The Supplemental Proposed Rule attempts to address these concerns by proposing (i) disclosures required to be included in communications where a third-party debt collector knows or should know that a debt is time-barred; and (ii) model language and forms that debt collectors may use to comply with such disclosure requirements. These requirements are discussed below.

In issuing the Supplemental Proposed Rule, the Bureau relied on its authority under the FDCPA and Section 1032 of the Dodd-Frank Act, which permits the CFPB to prescribe rules “to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and

circumstances.”<sup>1</sup> Notably, the Supplemental Proposed Rule does not rely on the CFPB’s authority under Section 1031(b) the Dodd-Frank Act to issue rules proscribing unfair, deceptive, or abusive acts or practices (UDAAP).

## Initial Disclosure Requirement

The Supplemental Proposed Rule provides that a debt collector who “knows or should know that a debt is time barred” when the debt collector makes the “initial communication” (as defined in the Proposed Rule) must, in the initial communication and on any validation notice subsequently required, “clearly and conspicuously disclose” the following:

- That the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and
- If, under applicable law, the debt collector’s right to bring a legal action against the consumer can be revived, the fact that revival can occur and the circumstances in which it can occur.

(These disclosures are referred to herein as the “Time-Barred Debt Disclosures.”)

## Additional Disclosure Requirements

The Supplemental Proposed Rule further provides that the Time-Barred Debt Disclosures must be provided in the event that:

- **Debt becomes time barred after the initial disclosure has been provided.** If a debt collector knows or should know that a debt has become time barred *after* the initial communication, the debt collector must include the Time-Barred Debt Disclosures (i) in the debt collector’s first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time bared; and (ii) on any required validation notice (if such has not yet been provided); or
- **A debt collector becomes aware that debt is time barred after the initial disclosure has been provided.** If a debt collector neither knows nor should know that a time-barred debt is time barred when the initial communication is made, but does know or should know that the debt is time bared *after* such initial communication, the debt collector must include the Time-Barred Debt Disclosures (i) in the debt collector’s first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time bared; and (ii) on any required validation notice (if such has not yet been provided).

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<sup>1</sup> 12 U.S.C. § 5532.

## Form of Disclosures

The Supplemental Proposed Rule includes model forms for providing the Time-Barred Debt Disclosures, the use of which confers a safe harbor. The Supplemental Proposed Rule further provides that:

- When made in a validation notice the (i) content; (ii) format; and (iii) placement of the disclosures must be “substantially similar” to that provided in the appropriate model form; and
- When provided orally or in a writing other than a validation notice, the content of the disclosures must be “substantially similar” to that provided in the appropriate model form.

The Supplemental Proposed Rule includes four model forms for the Time-Barred Debt Disclosures, addressing the following scenarios:

- A model form for use where, under applicable law, the debt collector’s right to bring a legal action against the consumer *cannot* be revived;
- A model form for use where, under applicable law, the debt collector’s right to bring a legal action against the consumer *can* be revived upon *either* payment, *or* written acknowledgement, of the debt;
- A model form for use where, under applicable law, the debt collector’s right to bring a legal action against the consumer *can* be revived, solely upon *payment* of the debt; and
- A model form for use where, under applicable law, the debt collector’s right to bring a legal action against the consumer *can* be revived, solely upon *written acknowledgement* of the debt.

The Supplemental Proposed Rule further notes that the Time-Barred Debt Disclosures must be made in the same “language or languages used for the rest of the communication in which the disclosures are conveyed.”

If you have any questions regarding Time-Barred Debt Disclosures or other related issues, please visit our [Debt Collection & Buying](#) practice page or contact a Buckley attorney with whom you have worked in the past.